



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: S&A Construction Company, Inc.

File: B-235490.2

Date: August 9, 1989

### DIGEST

Contracting agency reasonably found that bidder was nonresponsive based on a finding that the bidder's individual sureties on its bid bonds were unacceptable since the contracting agency was unable to verify the financial resources of each surety and doubt was cast on the sureties' net worth.

### DECISION

S&A Construction Company, Inc., protests the rejection of its low bid under invitation for bids (IFB) No. F41612-88-B-0067, issued by the Department of the Air Force for construction at Sheppard Air Force Base, Texas. The Air Force rejected S&A's bid because the firm failed to establish the financial adequacy of its individual bid bond sureties.

We deny the protest.

The IFB required each bidder to submit with its bid a bid guarantee equal to 20 percent of the bid price. Bids were opened on December 14, 1988, and S&A was the apparent low bidder at \$2,552,556. S&A submitted with its bid the standard bid bond form (SF) 24 listing two individual sureties. S&A's bid bond was in the amount of 20 percent of S&A's bid and was accompanied by a completed Affidavit of Individual Surety, SF 28<sup>1/</sup>, for each individual surety. The affidavits indicated net worths of \$10,058,149 for the first surety, Mr. Cody Lewis, and \$52,044,069 for the second surety, Mr. John B. Rich. The primary assets listed

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<sup>1/</sup> An SF 28 is a document, separate from the bond itself in which the individual pledges assets, which serves as an aid in determining the responsibility of an individual surety. Labco Constr., Inc., B-232986 et al., Feb. 9, 1989, 89-1 CPD ¶ 135.

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by both sureties were shares of stock in Tennessee Land and Development Corporation (TLDC); Mr. Lewis indicated that he owned 131,000 shares which he valued at \$9,759,500, while Mr. Rich stated that he owned 699,500 shares which he valued at \$52,000,000. The value of the stock is apparently based on the corporation's alleged ownership of 241,000 acres of land in Tennessee. Based on an appraisal, the sureties estimated that this property is worth \$241,000 (\$1,000 per acre).

The contracting officer initiated a review of the adequacy of the individual sureties, and requested the assistance of the Air Force Office of Special Investigations (AFOSI). The agency reports that based on the AFOSI report and supplemental documents and information furnished to the AFOSI during the investigation, the contracting officer found the sureties unacceptable for several reasons. First, he believed that the claimed value of the property held by TLDC was unsupported and therefore that the value of the shares of TLDC pledged by each surety was unclear. The appraiser who conducted the appraisal of the TLDC land holdings told the AFOSI investigator that he never performed a title search or checked the boundaries of the land, but instead worked from a rough legal description of the property. He advised that he "saw some [of the] lands in Tennessee," and "took TLDC's word about ownership." Moreover, the contracting officer noted that the company, allegedly with assets of more than \$50 million, lost \$18,000 last year. There was no indication in the financial submissions about how the sureties determined the value of each share of stock. The contracting officer therefore was unable to affirmatively determine the value of the shares in TLDC (a privately held closed corporation) and whether a market exists for these shares. Consequently, he was unable to establish the adequacy of each surety's net worth.

Second, the bank officer who certified the accuracy of Mr. Lewis' SF 28 told the investigator that he did not verify the assets Mr. Lewis had listed; specifically, he stated that he took Mr. Lewis' word about the shares in TLDC. Finally, the agency points out that Mr. Lewis had outstanding bond obligations in excess of \$2.9 million and Mr. Rich had outstanding bond obligations in excess of \$8.3 million.<sup>2/</sup>

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<sup>2/</sup> While the protester disputes these figures, it does not state what the proper amount is, nor can an alternative amount be ascertained from the record.

Based on his inability to verify the financial resources of the sureties, the contracting officer rejected S&A's bid of \$2,552,556 as nonresponsible, and subsequently awarded to the next lowest, responsible bidder at \$2,592,315. This protest followed.

S&A challenges the Air Force's determination of nonresponsibility of the sureties. S&A specifically claims that the affidavits identify sufficient assets and that the Air Force failed to provide the company sufficient opportunity during its investigation to establish the responsibility of the sureties.

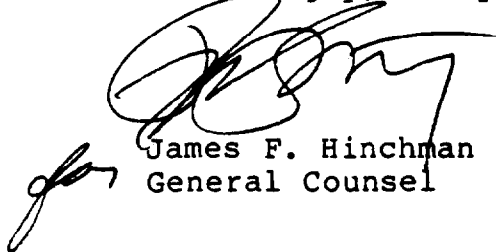
The contracting officer's obligation to investigate individual sureties is set out at Federal Acquisition Regulation § 28.202-2 (FAC 84-42), which requires that the contracting officer determine the acceptability of individuals proposed as sureties. The regulation states that the information provided in the SF 28 is helpful in determining the net worth of proposed individuals sureties. The agency, however, is not limited to consideration of information contained in the SF 28. Cascade Leasing, Inc., B-231848.2, Jan. 10, 1989, 89-1 CPD ¶ 20. Moreover, the contracting officer is vested with a wide degree of discretion and business judgment in determining surety acceptability, and therefore we will not object to a finding that a surety is unacceptable unless the protester shows that there was no reasonable basis for the determination or that the agency acted in bad faith. Ram II General Contractor, Inc., B-234613, June 7, 1989, 89-1 CPD ¶ \_\_\_\_\_. In our view, the record here reflects a reasonable basis for the nonresponsibility determination and does not show bad faith on the part of the Air Force.

Our review of the record confirms the agency's position that significant deficiencies in the documentation in support of the claimed assets of both sureties casts doubt on their financial net worths. For example, as noted previously, the AFOSI revealed that the appraisal of the land on which the value of the shares was based was incomplete. Neither a title search nor a survey was available to the appraiser. In any event, it is not clear that the appraiser actually examined a meaningful portion of the land. Moreover, the bank officer who certified Mr. Lewis' assets admitted that he had no personal knowledge of the value of the assets claimed. The protester does not dispute the findings of the AFOSI or the contracting officer. The evidence in the record here indicates that the financial net worth of S&A's sureties was questionable and the AFOSI's attempts to independently verify ownership and value of the claimed assets were unsuccessful. Without the value of the shares

pledged, when other liabilities such as mortgage and outstanding bond obligations are taken into consideration, we think the contracting officer could reasonably find that it was not clear the sureties' net worths were sufficient to cover the bond requirements. We, therefore, conclude that the Air Force reasonably determined that S&A's sureties were unacceptable.

Finally, we note that in its comments to the agency report, S&A asserts that the contracting officer improperly followed proposed regulatory action which would require the set aside of liquid assets by individual sureties and that the contracting agency failed to request additional relevant information from the parties. As stated, however, the record shows that the contracting officer's determination was reasonable and based primarily on the findings of the AFOSI investigation during which the special agent solicited and reviewed information from the protester and its sureties. Further, there is no indication that the contracting officer's determination was based upon the proposed regulatory requirement.

Accordingly, the protest is denied.



James F. Hinchman  
General Counsel